

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW M. FOCKAERT,
Petitioner,

v.
C. KOENIG,
Respondent.

Case No. [20-cv-02847-RS](#) (PR)

ORDER TO SHOW CAUSE

INTRODUCTION

Petitioner seeks federal habeas relief under 28 U.S.C. § 2254 from his state convictions and sentence. The petition for such relief is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

The petition states cognizable claims. Respondent shall file a response to the petition on or before **January 18, 2021**.

BACKGROUND

According to the petition, in 2018 petitioner pleaded nolo contendere in the Humboldt County Superior Court to charges of attempted second degree murder and false imprisonment and to a sentencing enhancement for personally inflicting great bodily injury while committing or attempting to commit a felony. (Pet., Dkt. No. 1 at 2.) A sentence of 10 years was imposed. (*Id.* at 1.)

Petitioner filed no direct appeals, but he did petition for state collateral relief, which was denied. (*Id.* at 2-4.) This federal habeas petition followed.

DISCUSSION

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall

“award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

As grounds for federal habeas relief, petitioner claims his sentence violates his federal constitutional rights in the ways described in the petition, (Pet., Dkt. No. 1 at 5). When liberally construed, these allegations state claims for relief.

CONCLUSION

1. The Clerk shall serve electronically a copy of this order upon the respondent and the respondent’s attorney, the Attorney General of the State of California, at the following email address: SFAWTParalegals@doj.ca.gov. The petition and the exhibits thereto are available via the Electronic Case Filing System for the Northern District of California. The Clerk shall serve by mail a copy of this order on petitioner.

2. On or before **January 18, 2021**, respondent shall file with the Court and serve on petitioner an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on petitioner’s cognizable claims. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that previously have been transcribed and that are relevant to a determination of the issues presented by the petition.

3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on respondent’s counsel within thirty (30) days of the date the answer is filed.

4. In lieu of an answer, respondent may file, on or before **January 18, 2021**, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the Court and serve on respondent an opposition or statement of

1 non-opposition within thirty (30) days of the date the motion is filed, and respondent shall
2 file with the Court and serve on petitioner a reply within fifteen (15) days of the date any
3 opposition is filed.

4 5. Petitioner is reminded that all communications with the Court must be served on
5 respondent by mailing a true copy of the document to respondent's counsel.

6 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
7 Court and respondent informed of any change of address and must comply with the
8 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this
9 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).


10 7. Upon a showing of good cause, requests for a reasonable extension of time will
11 be granted provided they are filed on or before the deadline they seek to extend.

12 8. The filing fee has been paid. (Dkt. No. 7.)

13 9. The Clerk shall amend the docket to reflect that C. Koenig, the warden of the
14 prison in which petitioner is housed, is the sole respondent in this action. Petitioner also
15 named Ralph Diaz, the Secretary of the CDCR, as a respondent in addition to Koenig.
16 Koenig, not Diaz, is the sole proper respondent here, as he is the custodian having day-to-
17 day control over petitioner, the only person who can produce "the body" of the petitioner.
18 *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (quoting *Guerra v. Meese*,
19 786 F.2d 414, 416 (D.C. Cir. 1986)). The Clerk shall terminate Diaz as a respondent.

20 **IT IS SO ORDERED.**

21 **Dated:** September 21, 2020

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23 RICHARD SEEBORG
24 United States District Judge
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